

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,730

In re: 3636 16<sup>th</sup> Street, N.W., Unit B 1066

Ward One (1)

JONATHAN WOODNER COMPANY  
Housing Provider/Appellant

v.

HELEN ENOBAKHARE  
Tenant/Appellee

**ORDER ON MOTION FOR EXTENTION OF TIME**

**August 22, 2003**

**BANKS, CHAIRPERSON.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

**I. THE PROCEDURES**

On January 17, 2003, Helen Enobakhare, Tenant, filed Tenant Petition (TP) 27,730 in the Department of Consumer and Regulatory Affairs (DCRA). Hearing Examiner Sandra McNair issued the decision and order on July 8, 2003. On July 24, 2003, the Housing Provider filed a timely notice of appeal. On July 31, 2003, the Commission issued its notice of hearing scheduled for September 24, 2003. On August 7, 2003, the Housing Provider filed a motion for extension of time to file an appellate

brief. The motion stated the Housing Provider counsel's efforts to obtain a copy of the agency hearing tapes, which were not duplicated until August 7, 2003, and the brief was due the next day. On August 19, 2003, the Tenant filed an opposition to the motion. It stated that the extension should not be granted, because the application was not timely filed at least five days before the due date, and that counsel was aware of the time limits when he filed the notice of appeal. The Tenant opined that the extension was too long and not justified, and that counsel did not state when he made the prior request for the tapes. The Tenant asserted that it was not standard procedure to request copies of tapes. If the motion was granted, the Tenant wanted "similar latitude" if she made a request for a continuance, in the future. Finally, the Tenant wanted copies of records, which she asserted she did not see until after the hearing.

## **II. THE COMMISSION'S ORDER**

### **A. The Law on Continuances**

The Commission's rules provide: "Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified," 14 DCMR § 3802.7 (1991). "Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed," 14 DCMR § 3802.8 (1991). "There shall be no reply to a responsive brief and the Commission shall not accept the brief if submitted," 14 DCMR § 3802.9 (1991). In addition:

Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission. (emphasis added.)

14 DCMR § 3815.1 (1991).

Motions shall set forth good cause for the relief requested.

14 DCMR § 3815.2 (1991), cited in MPM Mgmt. v. Perla, TP 27,190 (RHC Mar. 11, 2003).

Metropolitan Baptist Church v. District of Columbia Dep't of Consumer and Regulatory Affairs, 718 A.2d 119 (D.C. 1998), states the factors for consideration for a continuance are: 1) the reasons for the continuance (or extension of time, as in this case), 2) the prejudice resulting from the denial, 3) the party's diligence in seeking relief, 4) any lack of good faith, and 5) prejudice to the opposing party, citing Daley v. United States, 739 A.2d 814 (D.C. 1999), cited in Redman v. Graham, TP 24,681 (RHC Jan. 6, 2003), Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002).

#### B. The Analysis of this Case

The reason for the request for extension of time to file the Housing Provider's brief was that counsel was delayed, because he could not obtain copies of the hearing tapes from the agency and timely file the brief. The resulting prejudice to the Housing Provider's counsel was the inability to prepare the brief within the five-day period of time allowed in the Commission's rules. 14 DCMR § 3802.7 (1991). Counsel was diligent in seeking relief from the Commission during the five-day period prior to the due date of the brief. As noted in Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002):

Nevertheless, the Commission notes that the Housing Provider was on the horns of a dilemma. The Commission rule 14 DCMR § 3802.7 allowed the brief to be filed within five days of the notice that the Commission had the certified record of the OAD proceedings. The rule, 14 DCMR § 3815.1, allows for extension of time provided the motion is filed five days before the event to be extended. In this case the five days are identical. The Tenant's counsel was required to file either the brief or the motion to extend the time to file the brief within five days of receipt of the Commission's notice that the certified record was in the Commission.

(emphasis added.)

The identical circumstance is found in the instant appeal. Counsel for the Housing Provider had the identical five (5) business days after receipt of the notice that the Commission received the certified record to file the brief or file a motion to enlarge the time. It is impossible to file five days before the event that is to occur within five days. In other words, the event was to file the brief or file the motion to enlarge the time, during the business days of August 1-7, 2003. The choice made by counsel was to file for an enlargement of time on the fifth day, and that was reasonable under the circumstances. Accordingly, counsel was diligent during the five business day period, when he filed the motion to enlarge the time. There are no facts that show a lack of good faith. The filing of the Housing Provider's brief on August 22, 2003, will not prevent the Tenant from filing a responsive brief before the Commission's hearing on September 24, 2003.

Finally, the Commission reviewed the Tenant's opposition to determine whether there is prejudice to the Tenant, based on the reasons stated in the opposition. On August 7, 2003, counsel for the Housing Provider requested an extension of time of 11 business days to August 22, 2003. During this period, the Tenant had five business days to file the opposition, see 14 DCMR § 3814.3 (1991), plus three additional business days for mailing, 14 DCMR § 3816.5 (1991). The Tenant's time period expired on August 19, 2003, when she filed the opposition. Only three days remained to the end of the period, August 22, 2003, requested by the Housing Provider. Under these time constraints, the requested extension was reasonable. The Tenant's statements about the standard procedure of requesting hearing tapes is not supported by any credible evidence. The

Tenant's statement that she wanted "similar latitude" if, in the future, she made a request for a continuance, is improper and requires a ruling now on an event in the future that has not happened. The Commission cannot rule on the Tenant's request for copies of unidentified records that were requested by the Tenant, who may obtain copies of any document in the record. Accordingly, the Commission concludes that the counsel for the Housing Provider may file the brief on August 22, 2003.

SO ORDERED.

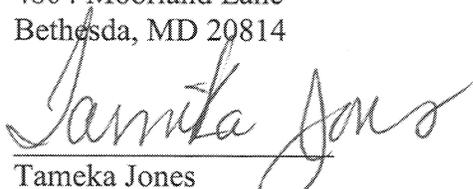
  
RUTH R. BANKS, CHAIRPERSON

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION FOR EXTENSION OF TIME in TP 27,730 was mailed by priority mail, with confirmation of delivery, postage prepaid this 3<sup>rd</sup> day of August, to:

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